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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,162	10/16/2003	Robert D. Harty	0006/01146	6814
27197	7590	05/12/2010		
MICHAEL J. CHERSKOV 300 NORTH STATE STREET SUITE 5102 CHICAGO, IL 60654			EXAMINER PATEL, TAJASH D	
			ART UNIT 3765	PAPER NUMBER
			NOTIFICATION DATE 05/12/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mail@cherskov.com
sgurda@cherskov.com
mcherskov@cherskov.com

Office Action Summary

Application No.

10/687,162

Applicant(s)

HARTY, ROBERT D.

Examiner

Tejash D. Patel

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 5, 7-16, 18-21 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4, 7-12, 21, 24-26 is/are allowed.
- 6) ☒ Claim(s) 13-16, 18-20, 23 and 28 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-16, 18-20, 23 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 5,215,080). Thomas et al. (hereinafter Thomas) discloses a device (40) to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front adapted to be worn with a helmet that makes contact with the wearer at multiple and distinct location by distributing force of impact that including a first free hanging impact resistant pliable substrate that extends upward from approximately the first thoracic vertebra to the base of the cranium when it ends in a free hanging depending end under the helmet that forms a zone of unbroken neurological protection to the back of the neck as shown in figures 2, 7 and 8.

Further, straps (12') extends from the first substrate having closure/securing means (14,30) and around a ventral region of the neck as shown in figures 2 and 8.

Further, the first substrate defines an arcuate outer shell with an integral cushioning substrate (18') as shown in figure 1. Also, the device has a pouch (34) defined between integral first and a second substrate (33',35') having cold pack therein.

It would have been obvious to one skilled in the art at the time the invention was made to recognize that the first substrate of Thomas made of wetsuit rubber, col. 2, lines 66 is capable of being shock resistant to a certain degree upon impact as known in the art. Further, with regard to claim 16, it would have been obvious to one skilled in the art that the first substrate of Thomas is substantially rigid and stable as are other material at room temperature.

It is obvious that the device (40) of Thomas can be under any head covering but not limited to a helmet in order to protect the neck and spine areas of the wearer as known in the art.

With regard to claim 18, the pouch of Thomas is defined as a positioning means with a cavity that receives cold pack therein as known in the art.

Further, with regard to claim 19, it is obvious to one skilled in the art that device of Thomas can include plurality of straps for additional support about the neck with opposed ends having hook and loop material that is worn about different sized necks or depending on the end use thereof.

With regard to claim 20, it is obvious that a third substrate (16'), figure 7 on the device of Thomas will directly overlay a tracheal region of the neck when fastened thereabout by the adjustable strap.

With regard to claim 23, it is obvious that at least a portion of the substrate extends along a dorsal surface between thoracic vertebra and a base of the skull as shown in figure 2.

Response to Amendment

3. The amendment and arguments filed on December 17, 2009 has been considered. In view of such, this office action is being made new non-final over prior art of record and the arguments are moot.

Allowable Subject Matter

4. Claims 4-5, 7-12, 21 and 24-26 are allowed.
5. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The group fax number is (571) 273-8300.

May 8, 2010

/Tejash Patel/
Primary Examiner

AU 3765